



Texas Department of Insurance

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Georgia D. Flint-Commissioner

May 29, 1992

The Honorable Dan Morales
Attorney General of Texas
Price Daniels Building
P. O. Box 12548
Austin, Texas 78711-2548

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Opinion Committee

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MARY KELLER

Dear General Morales:

As Members of the State Board of Insurance we respectfully request an expedited opinion concerning the legal status of various proposed amendments to the Texas Automobile Insurance Plan ("TAIP") currently pending before the State Board. The TAIP was established under Section 35 of Article 6701h, Texas Revised Civil Statutes. The State Board approved TAIP's plan of operation in the early 1950s. Both the Office of Public Insurance Counsel ("OPIC") and the TAIP have proposed plan amendments relating to TAIP governance and both have argued that the competing proposals are unlawful.

The plan of operation currently provides that plan amendments are effective only if approved by the governing committee and subscribing insurers and then filed with the State Board for approval [Section 8.5]. The current plan also provides that the State Board may, after notice and hearing, withdraw plan approval [Section 8.6]. OPIC is seeking repeal of Section 8.5. TAIP is seeking to modify the plan amendment procedure by eliminating the subscriber approval requirement and by providing that any interested party may propose plan amendments to the governing committee. TAIP is also seeking to remove the plan disapproval provision and replace it with a provision that the State Board is to notify the governing committee for requested corrective action. Additionally, both OPIC and TAIP seek to modify the governing committee's composition by adding public members and insurance agent members. The committee is currently composed of ten (10) insurer members selected by various insurer trade associations and non-affiliated companies. The OPIC proposal would provide for the State Board to determine

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the make-up of the governing committee and be consistent with the "at least one-half" the requirements of Article 1.35C of the Insurance Code relating to public representation. TAIP contends that the provision is not applicable.

These proposed amendments address the fundamental nature of the relationship between the TAIP and the State Board. Specifically, we ask the following questions:


1. Does Section 35 limit the State Board's authority over TAIP's plan of operation? What is the legal status of the current plan amendment approval and disapproval provisions?
2. What is the scope of the Board's authority to make or amend rules of TAIP?
3. If current plan amendment process as set out in TAIP's plan of operation in compliance with Section 35?
4. Is the Board has authority to amend the TAIP plan of operation, must it follow the amendment procedure set forth in plan of operation?
5. Does Section 35 give State Board the authority to withdraw its previous approval of TAIP plan? Would the proposed removal of the State Board disapproval provision affect legality?
6. As so construed, is Section 35 lawful?
7. If the plan of operation is amended to provide for Board appointment of governing committee members, is Article 1.35C applicable? Does the State Board have appointment authority beyond Article 1.35C?

We have attached copies of the OPIC and TAIP petitions and briefing materials. Please note that they address a number of additional issues that have already been resolved. We have recessed our hearing until June 30, 1992 so that we may have the benefit of your opinion before proceeding.

Very truly yours,


Claire Koriath
Chair


Richard F. Reynolds
Member


Allene D. Evans
Member